

JOSEPH E. WORTHINGTON

IBLA 81-334

Decided April 21, 1981

Appeal from the decision of the Eastern States Office, Bureau of Land Management, rejecting prospecting permit application ES-20564.

Affirmed.

1. Mineral Lands: Prospecting Permits

The Secretary of the Interior has no authority to approve a hardrock mineral prospecting permit application for lands in the Nantahala National Forest which were originally acquired by the Tennessee Valley Authority and later transferred to the jurisdiction of the Forest Service, Department of Agriculture, by interagency agreement.

APPEARANCES: Joseph E. Worthington, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Joseph E. Worthington has appealed the decision of the Eastern States Office, Bureau of Land Management (BLM), dated December 24, 1980, rejecting his hardrock prospecting permit application ES-20564.

The application covers three parcels of land on the southeast bank of the Nottely River in Cherokee County, North Carolina, designated as U.S.A. Tracts FBR-289, FBR-290, and FBR-292. The land was originally acquired by the Tennessee Valley Authority (TVA) pursuant to the TVA Act of 1933, 16 U.S.C. §§ 831-831dd (1976), and then transferred to the Forest Service (FS), Department of Agriculture, to be managed as part of the Nantahala National Forest (Agreement TV-54350, dated June 6, 1940, 5 FR 4504 (Nov. 16, 1940)).

BLM rejected the permit application because it believes it does not have the authority to issue prospecting permits for hardrock minerals on the land acquired by TVA and transferred to FS. In his statement of reasons, appellant asserts that BLM does have such authority

but does not substantiate that assertion. He also states that he has talked to an official of FS and corresponded with an official at TVA and reports that they believe that BLM has the authority to issue the desired hardrock mineral prospecting permit.

[1] Departmental regulations governing prospecting permits, 43 CFR 3510.0-3, provide that the Secretary of the Interior may issue permits to prospect unclaimed and undeveloped land subject to the provisions of the Mineral Leasing Act, as amended, 30 U.S.C. §§ 181-287 (1976) and the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), under the specific authorities set forth in 43 CFR 3500.0-3. 1/ In addition, 43 CFR 3510.0-3 authorizes the Secretary to issue permits for various other minerals but not hardrock minerals. Under 43 CFR 3500.0-3(b) relating to acquired lands, hardrock minerals may be the subject of a lease or permit under any one of three listed authorities: section 402 of the Reorganization Plan of 1946 (3 CFR 1067-68 (1943-1948 compilation)) and two other statutes relating to specific land not at issue herein. Section 402 of Reorganization Plan No. 3 of 1946 transfers the functions of the Secretary of Agriculture with respect to uses of mineral deposits on lands acquired by the Department of Agriculture pursuant to various statutes. 2/ None of the listed statutes, however, relates to the acquisition of the lands in the Nantahala National Forest by FS from TVA under Agreement TV-54350.

We note as well that there is no express authority vested in TVA by the TVA Act of 1933, supra, for authorizing prospecting and leasing of the lands acquired by TVA for the purposes of that agency. Under Agreement TV-54350, action by the Secretary of Agriculture is restricted to the extent that he agreed to administer the lands transferred to FS as part of the national forest in a manner providing maximum watershed protection and to neither resell, exchange, or open to entry any of the land except as agreed upon by TVA and FS (5 FR 4510 (Nov. 11, 1940)).

We conclude that BLM properly rejected appellant's hardrock mineral prospecting permit application for lack of authority to issue a permit for the desired lands.

1/ The Mineral Leasing Act for Acquired Lands, supra, authorizes the issuance of prospecting permits and leases for coal, phosphate, oil, oil shale, gas, sodium, potassium and sulphur on acquired lands, and thus does not apply to hardrock minerals. 30 U.S.C. § 352 (1976).

2/ The identified statutes are the Act of Mar. 4, 1917 (39 Stat. 1134, 1150, 16 U.S.C. § 520 (1976)), title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205, 40 U.S.C. §§ 401, 403(a) and 408 (1976)), the 1935 Emergency Relief Appropriation Act of Apr. 8, 1935 (49 Stat. 115, 118), section 55 of title I of the Act of Aug. 24, 1935 (49 Stat. 750, 781), and the Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended, July 28, 1942 (56 Stat. 725, 7 U.S.C. §§ 1011(c) and 1018 (1976)).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

